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10/020,744	10/30/2001	Jon Weise	973-001	9689

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EXAMINER

SAN MARTIN, EDGARDO

ART UNIT

PAPER NUMBER

2837

DATE MAILED: 06/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/020,744

Applicant(s)

WEISE, JON

Examiner

Edgardo San Martin

Art Unit

2837

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 30 October 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 October 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to because:
  - Figure 3A is not included in the Drawings as indicated in page 14, line 23 and page 17, line 17;
  - The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the thumb slide, the push button, and the ratchet must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Specification***

2. The disclosure is objected to because of the following informalities:
  - On page 18, line 5 after "upper section" should read - - 305 - - instead of "304";

- On page 18, line 5 after "lower section" should read - - 304 - - instead of "305";
- Applicant is reminded of the proper language and format for an abstract of the disclosure. The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. **The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided.** The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details. The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

3. Claim 26 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 26 recites the limitation "said earplugs" in line 2. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 15, 16, 18, 20, 22 – 32, 34, 35 and 37 are rejected under 35 U.S.C. 102(b) as being anticipated by Nakano (US 5,581,821).

With respect to Claims 15, 24, 25 and 28, Nakano teaches a method and system of ear protection comprising the steps of providing an encasement structure comprising at least an anterior member (Fig.6, Item 25) and posterior member (Fig.6, Item 24), wherein the anterior member and the posterior member are removably coupled together, preventing the penetration of harmful sounds into the ear canal by providing a

plurality of ear protection devices (Fig.2, Items 15 and 17), selectively retracting the plurality of ear protection devices, wherein the selectively retracting is executed by retraction means (Fig.4), securely stowing the plurality of ear protection devices adjacent to the encasement structure; and mounting the encasement structure upon an entity for convenient placement of the encasement structure with removable mounting means(Figs.1 – 3), and wherein the ear protection devices comprise earplugs (Fig.2, Items 15 and 17) (Col.2, Line 52 – Col.4, Line 36).

With respect to Claims 16, 26, 27 and 29, Nakano teaches wherein the ear protection devices are removably coupled to the retraction means (Col.4, Line 34+).

With respect to Claims 18, 30 and 31, Nakano teaches wherein the retraction means comprises a cord (Fig.3, Item 14) mounted on a spool (Fig.4, Item 30).

With respect to Claims 20 and 32, Nakano teaches wherein the retracting step comprises securing the extension of the plurality of ear protection devices by a spring loaded locking mechanism (Fig.4; Col.3, Line 47 – Col.4, Line 2).

With respect to Claims 22, 23, 34 and 35, Nakano teaches wherein the spring-loaded locking mechanism comprises a push button (Fig.4, Item 34), and a ratchet (Fig.4 and 5; Col.3, Line 47 – Col.4, Line 5).

With respect to Claim 37, Nakano teaches wherein the mounting means comprises a clip-on means (Col.2, Line 59).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 21, 33 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nakano (US 5,581,821) in view of Rozon (US 5,279,473).

With respect to Claims 21 and 33, Nakano teaches the limitations discussed in the previous rejections, but fails to disclose wherein the spring-loaded locking mechanism comprises a thumb slide.

On the other hand, Rozon teaches a cord retraction device comprising a spring-loaded locking mechanism (Fig.2, Item 37) comprises a thumb slide (Fig.2, Item 36).

It would have been obvious to a person with ordinary skill in the art to employ the Rozon thumb slide with the Nakano system because the thumb slide is easy to use and provide a good ergonomically fit actuator for a user to use.

With respect to Claim 36, Rozon teaches wherein the encasement structure is constructed of plastic (Col.2, Line 27).

6. Claim 38 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nakano (US 5,581,821) in view of Burger et al. (US 4,802,638).

Nakano teaches the limitations discussed in the previous rejections, but fails to disclose wherein the clip-on means is rotatable.

Nevertheless, Burger et al. teach a cord stowage apparatus comprising a rotatable clip-on means (Fig.12)

It would have been obvious to a person with ordinary skill in the art to employ the Burger et al. rotatable clip-on means with the Nakano design because it would provide a certain degree of movement that would prevent the cord from get tangle with the surface of the enclosure.

7. Claims 1 – 9, 11 – 13, 17 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over over Nakano (US 5,581,821) in view of Liao (US 6,416,005).

With respect to Claim 1, Nakano teaches the limitations discussed in the previous rejections, but fails to disclose a plurality of retraction means disposed within the encasement structure.

On the other hand, Liao teaches a wire winding box comprising a plurality of retraction means (Fig.3) disposed within an encasement structure.

It would have been obvious to a person with ordinary skill in the art to employ a plurality of retraction means, as described by Liao, in the Nakano design because the plurality of retraction means would provide an independent control of each cord connected an earplug, and would decrease the probability of excess of cord to getting hooked on something when the distance from the encasement to each ear is different.



With respect to Claim 2, Nakano teaches wherein the ear protection devices comprise earplugs (Fig.2, Items 15 and 17).

With respect to Claims 3 and 4, Nakano teaches wherein the ear protection devices are removably coupled to the retraction means (Col.4, Line 34+).

With respect to Claims 5, 17 and 19, Liao teaches wherein the interior of the encasement structure comprises protruding axes perpendicular to an anterior member (Fig.3).

With respect to Claims 7, 8 and 19, Nakano teaches wherein the retraction means comprises a cord (Fig.3, Item 14) mounted on a spool (Fig.4, Item 30).

With respect to Claim 9, Nakano teaches wherein the retracting step comprises securing the extension of the plurality of ear protection devices by a spring loaded locking mechanism (Fig.4; Col.3, Line 47 – Col.4, Line 2).

With respect to Claims 11 and 12, Nakano teaches wherein the spring-loaded locking mechanism comprises a push button (Fig.4, Item 34), and a ratchet (Fig.4 and 5; Col.3, Line 47 – Col.4, Line 5).

With respect to Claim 13, Nakano teaches wherein the mounting means comprises a clip-on means (Col.2, Line 59).

8. Claims 6 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nakano (US 5,581,821) in view of Liao (US 6,416,005), and further in view of Rozon (US 5,279,473).

With respect to Claim 10, Nakano and Liao teach the limitations discussed in the previous rejections, but fail to disclose wherein the spring-loaded locking mechanism comprises a thumb slide.

On the other hand, Rozon teaches a cord retraction device comprising a spring-loaded locking mechanism (Fig.2, Item 37) comprises a thumb slide (Fig.2, Item 36).

It would have been obvious to a person with ordinary skill in the art to employ the Rozon thumb slide with the Nakano and Liao system because the thumb slide is easy to use and provide a good ergonomically fit actuator for a user to use.

With respect to Claim 6, Rozon teaches wherein the encasement structure is constructed of plastic (Col.2, Line 27).

9. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nakano (US 5,581,821) in view of Liao (US 6,416,005), and further in view of Burger et al. (US 4,802,638).

Nakano and Liao teach the limitations discussed in the previous rejections, but fail to disclose wherein the clip-on means is rotatable.

Nevertheless, Burger et al. teach a cord stowage apparatus comprising a rotatable clip-on means (Fig.12)

It would have been obvious to a person with ordinary skill in the art to employ the Burger et al. rotatable clip-on means with the Nakano and Liao design because it would provide a certain degree of movement that would prevent the cord from get tangle with the surface of the enclosure.

### ***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Yang teaches a cable-spooling casing for earphones, Lai teaches a wire receiving device, Hugo et al. teach a window blind cord winding apparatus, Eisenmenger teaches a set of retractable ear plugs, Steff teaches a winding device for winding up and unwinding a tube, cable or hose, Luplow teaches a compact radio frequency receiver having take-up spool housed earphone conductors.

### ***Contact Information***

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edgardo San Martin whose telephone number is (703) 308-1050. The examiner can normally be reached on 8:00AM - 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Nappi can be reached on (703) 308-3370. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3431 for regular communications and (703) 305-3431 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0956.

Edgardo San Martín  
Patent Examiner  
Art Unit 2837  
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May 27, 2003



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